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TO:	ACTION	INFO
1. D/OLL		✓
3. DD/OLL		✓
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SUSPENSE

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Remarks:

*June 84*  
Date

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LEGISLATIVE LIAISON
84-3062

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Record

May 30, 1984

Honorable Romano L. Mazzoli  
Chairman, Subcommittee on Legislation  
Permanent Select Committee on Intelligence  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in connection with your bill to amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency (H.R. 5164). You may recall that I testified before your Subcommittee in favor of the central concepts contained in your bill.

I confess now to substantial concern that the legislation is in danger of being submerged in the Subcommittee on Government Information, Justice, and Agriculture of the Committee on Government Operations. I am told that Congressman English has essentially two objections: first, that this is a "bad time" to consider legislation that might be of assistance to the Central Intelligence Agency, and second, more substantively, that it is necessary to attach to the legislation an amendment making clear that the

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Privacy Act is not a (b)(3) exemption to the Freedom of Information Act.

I confess to substantial frustration over the first objection. If your legislation is, as I believe it is, good for our Nation's intelligence effort, it follows that it is also good for our Nation and for all our citizens. I would think that the mammoth effort put into this legislative enterprise so far, and its bipartisan support in Congress would be seen to reflect a solid consensus as to the legislation's wisdom and importance.

The second ground is a little more complicated, as you know. For years it had been the position of the Department of Justice that Congress did not intend by enacting the Privacy Act to create a (b)(3) exemption to the Freedom of Information Act. Given that they were considered and acted upon in such quick succession, it has always seemed to many observers illogical to think that Congress was taking away by enacting the Privacy Act what they purported to be giving with the Freedom of Information Act. The Reagan Administration, however, changed the Department's traditional view, to the apparent irritation of Congressman English. I am told that he now sees the CIA-FOIA reform as a means by which to lever the Department of Justice into reversing its position.

While as a personal matter I disagree with Justice's current position, the Department has taken the position publicly and as a matter of principle. Moreover, the circuits are split on the issue generally and there is a case pending before the Supreme Court that may serve to resolve the dispute in this coming Term. The Justice Department position would be, I suppose, that the Privacy Act issue is not all related to the CIA

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bill, and that in any event the Supreme Court will likely resolve the issue so far as present law is concerned within a few short months.

Whatever the merits of the respective positions, however, it is clear beyond doubt that valuable legislation is in danger of being sacrificed in this battle of principle. After some thought on the subject together with my former colleague from the Justice Department, Bob Saloschin, I have concluded that there may well be a compromise that merits serious consideration. If the Justice Department position is at all tenable, at least in my view, it is to the extent that the FBI would rather not process the large number of applications for documents under the Freedom of Information Act received from convicted felons in federal prisons, or their accomplices outside. If that is, as I believe it to be, the true concern of the Justice Department, it can quite effectively be protected by including in the general provision authored by Congressman English an exception, say, for applications to the FBI from convicted felons. Or, perhaps, the exception could apply to certain designated criminal investigative files of an especially sensitive nature. In any event, at least the core concerns of both Congressman English and the Justice Department could be conserved, and presumably, the CIA legislation then could be allowed to go forward to enactment.

I write you this lengthy letter with apologies because I know how busy you are and how limited your time is. But because you showed such perceptiveness and leadership in drafting the provisions of H.R. 5164, it occurred to me that you might find it valuable to have at your elbow the concept of a compromise possibly useful to break this legislative logjam. I do hope such a compromise will be possible, because I believe

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your bill is an extremely important piece of legislation for the Agency and for the country.

Please let me know if I can be of any further assistance. If the concept of compromise seems useful, I would of course be happy to suggest language for your consideration.

And once again, let me say how much I appreciated the warm hospitality you showed me at the hearings last February. I was very pleased then, as always, to be of assistance to you and to the Subcommittee.

With warm regards.

Sincerely yours,

  
John H. Shenefield

bcc:

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